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The Status of Women Under International Human Rights Law and the 1995 UN World Conference on Women, Beijing, China

BY MARGARET PLATTNER*

INTRODUCTION

In 1888, the first International Council of Women was held in Washington, D.C. The delegates consisted mainly of educated, affluent women from the United States and Europe. The primary issue for these women in the late nineteenth century was gaining the right to vote.¹ Lack of property rights, inequitable inheritance laws, and limited parental rights were also of concern to the fledgling women's movement.²

One hundred seven years later, the women's movement has assumed a global dimension, inclusive of women from every socio-economic and educational background. Yet similar issues of limited property rights and inheritance laws still challenged nations participating in the 1995 United Nations ("UN") Fourth World Conference on Women in Beijing, China.³

The problems facing women in 1995 were also more comprehensive and complex than the 1888 Council gathering. The world had changed from a singular, nationalistic perspective in the nineteenth century into a dynamic international political, social, and economic matrix of the twentieth century. Examples such as the girl-child sold into prostitution

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¹ ALMA LUTZ, *CREATED EQUAL: A BIOGRAPHY OF ELIZABETH CADY STANTON* 48 (photo. reprint 1974) (1940).

² *Id.*

³ Rev. Lillian Valentin de Forrey, *Live From Beijing: Reselection and Learning Process Will Continue*, LANCASTER NEW ERA, (Pa.), Sept. 24, 1995, at G1.

in Bangkok, Thailand⁴ and the bride burnings in the rural villages of India⁵ are of international concern as human rights violations and no longer considered isolated, local problems. Legalistic mechanisms established by treaties and customary international law no longer tolerate such practices.⁶

However, many countries continue to have traditional, customary, and religious practices involving women that are in direct conflict with these standards and laws. As the Deputy Secretary of the United Nations, Ismat Kittani, stated in his opening speech at the Beijing Conference: "[T]he challenge is how to make [existing] laws take effect in the daily lives of women."⁷ This is the challenge which faces the human rights of women, notwithstanding the fact that their rights are supposed to be inalienable, integral and indivisible parts of universal human rights.⁸

The 1995 UN World Conference on Women presented the world community with the opportunity to reaffirm, support, and strengthen women's rights as an integral part of the international human rights paradigm.⁹ Furthermore, the Conference aimed to rekindle the momentum gained at previous UN women's conferences, to heighten awareness of recurring issues, and to focus on a coherent strategy to implement the Conference's objectives. As such, the status of women under international human rights law and the Beijing Conference Plan for Action are the focus of this Article.

I. SUMMARY OF INTERNATIONAL LAW TREATIES AND WOMEN'S RIGHTS

A. *Historical Background*

In order to better understand the international context of the Beijing Conference, "women's rights [as] human rights" requires a historical

⁴ Paula Story, *War on Child Prostitution*, SEATTLE TIMES, Nov. 23, 1994, at A12.

⁵ Basu Rekha, *Burning Brides: The Outrage Grows*, DES MOINES REG., Oct. 9, 1995, at 1.

⁶ See, e.g., Convention on the Rights of the Child, Nov. 20, 1989, at 20, 28 I.L.M. 1448 (entered into force Sept. 2, 1990).

⁷ Li Xing, *UN Conference Opens*, WORLD WOMEN, Sept. 4, 1995, at 1.

⁸ World Conference on Human Rights: Vienna Declaration and Programme of Action, June 25, 1993, 32 I.L.M. 1661, 1667 [hereinafter Vienna Declaration and Programme of Action].

⁹ *Sending the World a Vital Message*, CHI. TRIB., Sept. 26, 1995, at 16.

summary. First, the term "human rights" is a broad, interrelated term with various applications:

[H]uman rights are understood to represent individual and group demands for the shaping and sharing of power, wealth, enlightenment, and other cherished values in community process, most fundamentally the value of respect and its constituent elements of reciprocal tolerance and mutual forbearance. . . . [I]f a right is determined to be a human right it is quintessentially general or universal in character. . . .¹⁰

Second, human rights, by definition, encompass all aspects of women's issues. Whether the issue is education, economics, or government, equal rights with respect to opportunity and status is a fundamental component of a woman's liberty and dignity. By establishing an international code of behavior, through human rights treaties and conference documents, these efforts strengthen the world community's obligations toward women and enhance her own self-worth in society.¹¹

Since the inception of the UN in 1945, the definition of human rights has been codified into law by international human rights treaties. In practice, however, international treaties occasionally play a subordinate role to the "realpolitik" and interests of a sovereign nation. As a result, governments circumvent international law and allow human rights abuses of certain individuals or groups to suit their own ends.¹²

Historically, the UN has rarely intervened in a country's internal affairs to enforce international human rights laws, because that body is legally obligated to recognize the self-determination of a sovereign nation.¹³ Ultimately, protecting the rights of women becomes an internal matter subject to domestic laws. Legally binding international documents are, therefore, rendered ineffective unless a government actually enforces international human rights law, or implements national laws which

¹⁰ BURNS H. WESTON ET AL., *INTERNATIONAL LAW AND WORLD ORDER* 730 (2d ed. 1990).

¹¹ See, e.g., *Convention on the Elimination of All Forms of Discrimination Against Women*, Dec. 18, 1979, 19 I.L.M. 33 (entered into force Sept. 3, 1981) [hereinafter CEDAW] (noting that all people are born with equal dignity and rights).

¹² See *A Clarion Call to End Nigeria's Misrule*, POST-STANDARD (New York), Dec. 13, 1995, at A9 (reporting the murder of a pro-democracy activist by the head of the Nigerian dictatorship).

¹³ U.N. CHARTER art. 2, ¶ 7.

prohibit gender discrimination. The Beijing Conference highlighted this legal dilemma.

The UN attempted to secure human rights for both men and women beginning with the Charter of the United Nations, signed in 1945. This document, which established the UN, states in Article 1 that the United Nations is responsible for "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."¹⁴ The legislative body of the United Nations, the General Assembly, adopted the Universal Declaration of Human Rights in 1948.¹⁵ Delegate Eleanor Roosevelt encouraged consideration of the rights of women, and as a result, the preamble of that document states that "the peoples of the United Nations . . . reaffirm their faith in fundamental human rights . . . and in the equal rights of men and women."¹⁶ These documents were the beginning of international recognition for the equal rights of women and their right to full participation in all areas of life. Unfortunately, there was no UN monitoring organization designed to enforce these human rights for quite some time.¹⁷

In 1966, the International Covenant on Economic, Social and Cultural Rights was signed.¹⁸ However, as it repeatedly failed to receive the approval of a majority of member nations, it did not go into force until December, 1976.¹⁹ This Covenant centered on the rights of self-determination for all peoples.²⁰ Under the terms of the Covenant, self-determination means that people should be able to determine their political status, and have the right to freely pursue their economic, social, and cultural development.²¹ Article 2 emphasizes that the rights enunciated in the Covenant "will be exercised without discrimination of any kind as to race, colour, or sex"²² Article 3 provides that all states party to the

¹⁴ U.N. CHARTER art. 1, ¶ 3 (emphasis added).

¹⁵ Universal Declaration of Human Rights, Dec. 10, 1948.

¹⁶ Universal Declaration of Human Rights, pmbl., Dec. 10, 1948.

¹⁷ This lack of monitoring and enforcement led to the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") beginning in the early 1960s. See *infra* notes 45-87 and accompanying text.

¹⁸ CENTER FOR THE STUDY OF HUMAN RIGHTS, COLUMBIA UNIVERSITY, TWENTY-FIVE HUMAN RIGHTS DOCUMENTS 10 (1994).

¹⁹ *Id.*

²⁰ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, art. 1, 999 U.N.T.S. 31, 6 I.L.M. 360 (entered into force Jan. 3, 1976).

²¹ *Id.*

²² *Id.* art. 2.

Covenant undertake to ensure the equal rights of both men and women regarding the enjoyment of all economic, social, and cultural rights set forth in the Covenant.²³ Specifically, the rights enunciated in the Covenant include the following: to earn a living as one freely chooses;²⁴ to receive fair wages;²⁵ to work under reasonable conditions;²⁶ to protect one's family;²⁷ to be free from hunger;²⁸ the opportunity to receive an education;²⁹ and to engage in a cultural life without punishment.³⁰ This last right recognizes the right of the individual to participate in the literary or artistic field without fear of governmental retribution.³¹

The International Covenant on Civil and Political Rights ("ICCPR"), entered into force in March, 1976, highlighted the civil and political rights of all men and women.³² The ICCPR established that governments must allow for a competent judicial, administrative, or legislative authority when an individual seeks a redress of grievances;³³ that no one shall be subject to compulsory labor;³⁴ that an accused is considered innocent until proved guilty;³⁵ and that there exist the rights of religious freedom and freedom of association.³⁶

The above Covenants specifically bind acceding or ratifying states to undertake and ensure that women and men are accorded equal rights status.³⁷ Furthermore, each Covenant translates the principles of the Universal Declaration of Human Rights into a legally binding form.³⁸

Between 1947 and 1962, the UN Commission on the Status of Women helped initiate the procedures which led to the enactment of these

²³ *Id.* art. 3.

²⁴ *Id.* art. 7.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* art. 11.

²⁹ *Id.* art. 13.

³⁰ *Id.* art. 15.

³¹ *Id.*

³² International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (1967) (entered into force Mar. 23, 1976).

³³ *Id.* art. 2.3(b).

³⁴ *Id.* art. 8.3.

³⁵ *Id.* art. 14.2.

³⁶ *Id.* arts. 18, 22.

³⁷ *Id.* art. 2.1.

³⁸ *Id.*; see *supra* notes 15-17 and accompanying text.

Covenants and Declarations.³⁹ In addition, the Commission was instrumental in organizing several conventions on women's issues, including Rights of Women,⁴⁰ the Convention on the Nationality of Married Women,⁴¹ and the Convention on Consent Minimum Age and Registration of Marriages.⁴² The Commission believed that the major issue facing women was that of their marital status, and it sought to clearly define these practices and uphold the rights of women as individuals.⁴³

B. The Convention on the Elimination of All Forms of Discrimination Against Women

Despite the fact that international instruments existed to legally protect women, there was not an internal UN legal framework to specifically monitor discrimination against women and to react to such practices.⁴⁴ "The Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") came about because the protection and promotion of women's rights was fragmentary, as the UN failed to deal with discrimination in a comprehensive and juridical way."⁴⁵ As a result, the Commission on Women was invited in the 1960s to prepare a draft declaration that would articulate specific international standards regarding discrimination against women. The Commission submitted a declaration, known as "The Declaration on Elimination of Discrimination Against Women," which was formally

³⁹ PROGRESS ACHIEVED IN THE IMPLEMENTATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1995), available at gopher://gopher.undp.org:70/00/unconfs/women/off/a--7.en [hereinafter PROGRESS ACHIEVED IN IMPLEMENTATION OF CEDAW].

⁴⁰ Convention on the Political Rights of Women, Mar. 31, 1953, 193 U.N.T.S. 135, reprinted in 2 WORLD TREATY INDEX 704 (2d ed. 1983) (entered into force July 7, 1954).

⁴¹ Convention on the Nationality of Married Women, Jan. 9, 1947, 36 U.N.T.S. 145, reprinted in 2 WORLD TREATY INDEX 704 (2d ed. 1983) (entered into force Aug. 3, 1949).

⁴² Convention on Consent, Minimum Age and Registration of Marriages, Dec. 10, 1962, 451 U.N.T.S. 269, reprinted in 3 WORLD TREATY INDEX 1168-69 (2d ed. 1983) (entered into force Dec. 9, 1964).

⁴³ See *supra* note 39 and accompanying text.

⁴⁴ See *supra* note 17 and accompanying text.

⁴⁵ Vienna Declaration and Programme of Action, *supra* note 8.

adopted by the General Assembly in November, 1967.⁴⁶ However, even this Declaration did not have the contractual force of a treaty.

In the 1970s, the women's movement was achieving more prominent international recognition. Gender discrimination became more apparent as the world community's consciousness was raised. While women comprised half of the world's population,⁴⁷ they were still marginally represented in both the public and private sectors.⁴⁸ Five years after the adoption by the UN General Assembly of the Declaration of the Elimination on Discrimination Against Women, the Commission on the Status of Women was most interested in a binding commitment that would have the legal force of a treaty. The instrument would be an international, comprehensive document, whose purpose was to eliminate discrimination against women. Moreover, such a document was necessary to help establish a *means* to enforce these ideas and to eliminate gender discrimination. This instrument became known as CEDAW.

CEDAW, adopted in 1979 by the UN General Assembly, requires those nation-states agreeing to implement it to take appropriate measures to eliminate discrimination against women in government, law, education, employment, health care, business, reproductivity, and family life.⁴⁹ States party to the agreement thus agree to initiate "all appropriate measures, including legislation, to ensure equality."⁵⁰ The Convention further established a committee of twenty-three nongovernmental experts to oversee compliance with the provisions of the Convention.⁵¹ At least every four years, parties to the treaty are expected to submit a report indicating appropriate measures taken to carry out the spirit and the letter of the treaty.⁵² Governments are also to report to this committee on the implementation of CEDAW provisions.⁵³ In essence, CEDAW codified international legal standards exclusively for women.

⁴⁶ G.A. Res. 2263, U.N. GAOR, 22d Sess., Supp. No. 16, U.N. Doc. A16716 (1967).

⁴⁷ See, e.g., STATISTICAL ABSTRACT OF THE UNITED STATES: 1995, at 14 (115th ed. 1995) (in 1970, women accounted for 51.3% of the United States population).

⁴⁸ *Id.* at 402 (in 1970, women accounted for 38.1% of the United States civilian work force).

⁴⁹ See generally CEDAW, *supra* note 11.

⁵⁰ *Id.* art. 3.

⁵¹ *Id.* art. 17.

⁵² *Id.* art. 18, ¶ 1.

⁵³ *Id.*

Presently, 139 Member-States have ratified CEDAW; the agreement came into force in 1981.⁵⁴ The United States was an active participant in drafting this treaty and signed it on July 17, 1980, under the Carter administration.⁵⁵ However, to date, the United States Senate has failed to fully ratify CEDAW. Under general treaty practices of international law, "ratification is usually the second step in a two-stage process" after signing it.⁵⁶ The signature of a state authenticates the text of the agreement, but national authorities must approve the treaty by some form of governmental mechanism to cement the ratification process.

In this country, CEDAW has not been ratified by the United States Senate due to certain provisions which are in question. The United States Justice Department has stated in a Memorandum of Law that some provisions do not conform with current American laws.⁵⁷ Notwithstanding President Clinton's overall support of CEDAW, his administration has entered four reservations, three understandings, and two declarations to the treaty.⁵⁸

The first reservation the United States government made is "the broad definition of discrimination against women [in the treaty] appears [to apply] to private organizations and areas of personal conduct not covered by United States law."⁵⁹ According to this interpretation, Articles 2, 3, and 5 of CEDAW require broad regulation of private conduct in order to eliminate discrimination.⁶⁰ The second reservation involves women's status in the military.⁶¹ In the United States, women may only serve in certain combat roles, and are specifically prohibited from serving directly as infantry in ground warfare.⁶² However, since CEDAW seeks to eliminate gender discrimination in *every* sphere, including the military, all combat positions would be made available to women.⁶³

⁵⁴ CEDAW, THE UNITED NATIONS AND THE STATUS OF WOMEN, available at <http://www.on.org/Conferences/women/pubinfo/status/home.htm>.

⁵⁵ *Id.*

⁵⁶ THOMAS BURGENTHAL & HAROLD G. MAIER, PUBLIC INTERNATIONAL LAW 97 (1991).

⁵⁷ Laurel Fletcher et al., *Human Rights Violations Against Women*, 15 WHITTIER L. REV. 319, 334-35 (1994).

⁵⁸ Michael J. Corbera, *The Women's Convention and the Equal Protection Clause*, 26 ST. MARY'S L.J. 755, 778 (1995).

⁵⁹ Congressional Research Service report on file with author.

⁶⁰ Corbera, *supra* note 58, at 778.

⁶¹ *Id.*

⁶² CEDAW, *supra* note 11, at art. 11.

⁶³ See D'Ann Campbell, *Combating the Gender Gulf*, 2 TEMP. POL. & CIV.

The third objection to CEDAW stems from the idea of "comparable worth." United States law requires equal pay for equal work in jobs that are substantially similar.⁶⁴ However, the United States government has refused to accept any obligation under CEDAW to enact legislation codifying the doctrine of "comparable worth," a subject of controversy in this country.⁶⁵

The fourth objection to CEDAW involves Article 11(2)(b), which addresses the issue of paid maternity leave without fear of loss of employment, seniority, or social allowances. While the 1993 Family Leave Act permits women to take unpaid maternity or paternity leave for twelve weeks, it does not require paid parental leave by any employer.⁶⁶ Thus, the United States Senate has declined to ratify CEDAW for its unwanted effects on private employers, military operations, and businesses.

The Senate's advice and consent is also subject to three understandings, which may alter the provisions of CEDAW as enacted. First, the Senate will implement the CEDAW provisions as enumerated, only *to the extent* that such law is consistent with the U.S. Constitution.⁶⁷ Thus, under the Supremacy Clause,⁶⁸ CEDAW may not be inconsistent with the Constitution.

The Senate's second qualifying understanding involves CEDAW Articles 5, 7, 8, and 12, which grant equal protection to women in a variety of areas.⁶⁹ The United States government asserts that these Articles may restrict the rights to individual freedom of speech, expression, and association as provided in the First and Fourteenth Amendments to the United States Constitution.⁷⁰ It is put forth that free speech and

RTS. L. REV. 63 (1992); Lucinda J. Peach, *Women at War: The Ethics of Women in Combat*, 15 HAMLINE J. PUB. L. & POL'Y 199 (1994); Pamela R. Jones, Note, *Women in the Crossfire: Should the Court Allow It?*, 78 CORNELL L. REV. 252 (1993).

⁶⁴ Equal Pay Act of 1963, 29 U.S.C. § 206 (1992).

⁶⁵ Corbera, *supra* note 58, at 778.

⁶⁶ Family and Medical Leave Act of 1993, 29 U.S.C. § 2612 (1995).

⁶⁷ Corbera, *supra* note 58, at 777.

⁶⁸ U.S. CONST. art. VI, cl. 2.

⁶⁹ CEDAW requires that countries grant equal protection for women by eliminating cultural bias; that state-parties to take all appropriate measures to eliminate discrimination against women in political and public life; that state-parties shall eliminate discrimination against women in the health care field, and provide access to health care services, including family planning.

⁷⁰ See Sarah C. Zearfoss, Note, *The Convention for the Elimination of All*

equal protection guarantees would be denied to men if, for example, they were not allowed to run for political office due to a mandatory quota for women to hold certain elected positions. In response to that position, the government has a substantial interest in permitting benign discrimination in order to rectify the disproportionate percentage of males to females holding elected positions. However, it is doubtful that Congress will every accede that this interest is "substantial."⁷¹

Finally, Senator Jesse Helmes (R-North Carolina) has stated that the Convention shall not be construed as promoting abortion as a family planning method.⁷² The issue of abortion is so extremely controversial in the United States, and it seems the Senate is hesitant to overtly embrace a program which specifically promotes reproductive choice, including abortion, on an international level.

What are the ramifications of the United States Government's reservations to CEDAW? This Convention permits ratification despite a member-state's reservations that they will not abide legally by all of the Convention's provisions.⁷³ As long as the reservations are not incompatible with the "object and purpose" of CEDAW, the reservations are not unacceptable.⁷⁴

In this case, if the Convention accepts the reservations, the United States is not obligated to carry out the specific provisions of CEDAW to which the reservations apply. Nonetheless, the treaty does become binding on the United States despite their accepted reservations. If the reservations are found to be fundamentally inconsistent with the "object and purpose" of the Convention, then the United States may not become a state-party to CEDAW. Whether the Senate will do so remains to be determined. As of this writing, the Chairman of the Senate Foreign Relations Committee, Senator Jesse Helms, has held up a vote on CEDAW due to overall foreign policy differences with the Clinton administration.⁷⁵

Forms of Discrimination Against Women: Radical, Reasonable, or Reactionary?, 12 MICH. J. INT'L L. 903, 905 (1991) (noting that adopting the Convention would require amending the Constitution to reach the private sector).

⁷¹ See *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

⁷² Editorial, *Failure to Sign Treaty Embarrasses U.S.*, OAKLAND TRIBUNE, Sept. 6, 1996, at A-14.

⁷³ PROGRESS ACHIEVED IN IMPLEMENTATION OF CEDAW, *supra* note 39, at 61.

⁷⁴ BURGENTHAL & MAIER, *supra* note 56, at 99.

⁷⁵ *World Unite for Equality*, SEATTLE POST-INTELLIGENCER, Sept. 3, 1995, at E2.

Advocates of CEDAW argue the paramount importance of this treaty. In a speech at the Beijing Conference, Ivanka Corti, Chairperson of CEDAW, stated:

CEDAW is the most comprehensive charter of women's human rights. . . . CEDAW brings together in a single Convention all the various instruments concerning the status of women. . . . Its legally binding and internationally accepted nature makes the Convention the basic, legal framework for a far-reaching strategy to protect and promote the fundamental rights of women and to eradicate *de jure* and *de facto* inequality and discrimination.⁷⁶

In that same speech, Corti also recited compelling statistics as she highlighted the need for CEDAW. For example, women worldwide are paid thirty to forty percent less than men;⁷⁷ women represent a disproportionate share of the unemployed in *every* age group and region in the world;⁷⁸ several multi-religious countries have separate laws for women, especially with respect to domestic relations;⁷⁹ inheritance rights are given more significant weight to male heirs than female heirs;⁸⁰ and women on average comprise 10.5% of legislators and 6.1% of decision-makers at the ministerial level, though women make up fifty-six percent of the total population.⁸¹ In response to such low statistics, some countries have adopted quota systems for women to ensure increased political participation in domestic legislative bodies.⁸²

With the obvious lack of equality for women in most areas of life and government, the need for aggressive change is apparent. One of CEDAW's goals is to restructure political systems to include greater numbers of women in positions of authority.⁸³ The United States has not yet joined the above countries in this effort.

⁷⁶ Remarks by CEDAW Chair (Ivanka Corti) to CEDAW Committee, Sept. 1995, Beijing, China.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² These quotas range from 20% to 50%. These countries include Argentina, Austria, Belgium, Denmark, France, Germany, Greece, Iceland, Israel, Netherlands, Norway, Spain, Sweden, and Venezuela.

⁸³ See, e.g., CEDAW, *supra* note 11, at arts. 3, 7.

CEDAW would require more aggressive United States policies in support of women. This would include strengthening affirmative action programs to ensure that women have equal access to political and economic power centers.⁸⁴ However, the electoral process in this country is unlikely to be altered to accommodate greater representation of women in the Congress or at the state legislative level. Moreover, since affirmative action has received heavy criticism by opponents,⁸⁵ it is doubtful such programs would be strengthened unless there is a substantial governmental interest.

Another idea in restructuring political representation is "cumulative voting."⁸⁶ Cumulative voting is currently a practice used by corporations in selecting board members. This is a concept whereby a person may vote a number of times based on the number of candidates running for that same office. For example, if five candidates run for the same elective office, a voter in that district may vote five times. Five votes may be spread out to different candidates for the same office, or attributed all to the same candidate. Advocates of this voting procedure believe that minority representation would increase in time over the traditional "one person, one vote" method.⁸⁷ However, cumulative voting is an idea whose time has not yet come in American politics.

Finally, CEDAW has had a positive effect in other countries. Ratification has led to policy changes regarding the equality of women and men. For example, the constitutions of many countries now incorporate clauses providing equality of the sexes before the law. Furthermore, a number of parties to CEDAW have incorporated the principles of the Convention into their national laws. The Convention has even influenced litigation in the field of discrimination.

C. *Post-CEDAW Developments*

Documents involving women's issues subsequent to CEDAW's ratification include the Vienna Declaration and Programme of Action 2,⁸⁸ the Declaration on the Elimination of Violence Against

⁸⁴ See, e.g., *id.* at arts. 10, 11.

⁸⁵ E.g., Terry Eastland, *The Case Against Affirmative Action*, 34 WM. & MARY L. REV. 33, 35-38 (1992) (discussing problems with affirmative action).

⁸⁶ See, e.g., Lani Guinier, *No Two Seats: The Elusive Quest for Political Equality*, 77 VA. L. REV. 1413, 1502-05 (1991) (discussing cumulative voting as a means of assuring minority representation).

⁸⁷ *Id.* at 1502.

⁸⁸ Vienna Declaration and Programme of Action, *supra* note 8.

Women,⁸⁹ and the Cairo Declaration on World Population.⁹⁰ The Vienna Declaration and Programme of Action 2 lists the human rights of women as a top priority for nations and the UN. The Vienna Declaration supports the creation of a new mechanism whereby complaints relating to gender discrimination would be recorded, and involved the appointment of a special Rapporteur on violence against women. The Rapporteur reports information on violence against women to the UN Commission on Human Rights.⁹¹ Finally, the Declaration states that violence against women, sexual harassment and exploitation, including cultural prejudice and international trafficking of women, are incompatible with the dignity and the worth of the individual.⁹² The Declaration on the Elimination of Violence Against Women placed the issue of violence in a human rights context.⁹³

The Cairo Declaration, which addressed family planning issues, established that cultural norms and traditions should be respected.⁹⁴ This is in contrast to the Vienna Declaration, which focused on the theme of "universality" of women's issues. As mentioned previously, several countries have established cultural, religious practices and beliefs which conflict with the message of women's rights.⁹⁵

The above mentioned Declarations, while not binding in force, substantially reinforce the goals of CEDAW and encourage governments to act swiftly to promote the rights of women in their respective societies. Those Declarations also conform with the principles and objectives of international human rights law.

In summary, international law establishes that "women's rights are human rights."⁹⁶ The challenge for the UN is to maintain pressure on its member-states who signed CEDAW to implement this instrument and

⁸⁹ Declaration on the Elimination of Violence Against Women, Feb. 23, 1994, 33 I.L.M. 1049.

⁹⁰ The UN International Conference on Population and Development, Oct. 18, 1994, A/Conf.171/13, available at gopher://gopher.undp.org.to/oo/ungophers/popin/icpd/conference/offeng/poa [hereinafter Cairo Declaration]. At Cairo in 1994, women's health, empowerment, and reproductive rights were placed at the center of population-related development policies.

⁹¹ Vienna Declaration and Programme of Action, *supra* note 8.

⁹² *Id.* at 1668-19.

⁹³ Declaration on the Elimination of Violence Against Women, *supra* note 89, at 1050.

⁹⁴ See Cairo Declaration, *supra* note 90 and accompanying text.

⁹⁵ See *supra* notes 4-7 and accompanying text.

⁹⁶ See *supra* note 8 and accompanying text.

other human rights documents affecting women. In order for treaties like CEDAW to have any real practical effect, countries must be held accountable to the agreements to which they have committed themselves. For those countries who remain uncommitted to the ideals of CEDAW, persuasion and incentives, and perhaps even censure, must be exercised by the UN.

II. UNITED NATIONS CONFERENCES ON WOMEN

From Mexico City to Beijing, there have been four UN world conferences on women.⁹⁷ The purpose of UN sponsored women's conferences is to bring together diverse systems, cultures, and traditions and seek consensus on women's issues.⁹⁸ The Women's Conference documents are nonbinding, yet serve a two-fold purpose: first, to reinforce human rights treaties protecting women; and second, to highlight new and unique concerns to women.

The first UN conference was held in 1975 during the International Women's Year in Mexico City. This time was deemed the "UN Decade for Women."⁹⁹ That particular conference adopted a Plan of Action that led to the declaration by the UN General Assembly of the "UN Decade for Women." That legislative body also demonstrated its commitment to women that year by adopting CEDAW.¹⁰⁰

The second conference, held in 1980 in Copenhagen, Denmark, adopted a Program for Action for the second half of the UN Decade for Women. The emphasis was on education, employment, and health.¹⁰¹ The third conference took place in Nairobi, Kenya, in 1985, where the members reviewed obstacles encountered by women world-wide, and measured progress on women's issues since the Mexico City conference.¹⁰² The Nairobi Forward-Looking Strategies for the Advancement of Women to the Year 2000 were adopted by consensus at this conference. "The Strategies provided a framework for action at the national,

⁹⁷ Sarah Prosser, *Beijing Conference Visit Bolsters Hoosier Woman's Commitment*, INDIANAPOLIS STAR, Oct. 1, 1995, at J1.

⁹⁸ Li Xing, *supra* note 7, at 1.

⁹⁹ Alison Mayes, *Toast to Women in Film Explores Myths, Struggles: "But Men Are Completely Welcome,"* CALGARY HERALD, Feb. 1, 1995, at B6.

¹⁰⁰ See *supra* notes 45 & 49 and accompanying text.

¹⁰¹ BUREAU OF PUBLIC AFFAIRS, UNITED STATES DEPARTMENT OF STATE, FOCUS ON 4WCW, BACKGROUND ON UN CONFERENCES AND NGO FORUMS (1995).

¹⁰² *Id.*

regional, and international levels to promote empowerment of women and their enjoyment of human rights.”¹⁰³

In 1990, the Nairobi Forward-Looking Strategies were reviewed by the UN Commission on the Status of Women. The Commission indicated that the world community had to become more responsive and sensitive to women’s issues.¹⁰⁴ However, the Commission also determined that there seemed to be some loss of momentum in the implementation of the Strategy’s objectives.¹⁰⁵ One of the Beijing Conference’s goals was to build momentum on the strategies set out by previous women’s conferences.

While the Nairobi Forward-Looking Strategies are not legally binding, they provided important, factual support and conclusions for the Platform for Action (“PFA”), the foundation for the document adopted at the Beijing Conference. A second review of the strategies was conducted in 1994, and provided the following recommendations for Beijing: redirecting resources to low-income women; ensuring females have the same access to education as their male counterparts; enacting laws that guarantee women equal access to land, assets, and employment opportunities; and developing strategies to reduce poverty.¹⁰⁶

III. THE 1995 UN WORLD CONFERENCE ON WOMEN IN BEIJING, CHINA

A. *The Platform for Action Recommendations; Twelve Areas of Concern*

In September 1995, thousands of women from around the globe travelled to Beijing, China for the express purpose of empowering women and transforming their status quo in society. Additionally, participants assessed the progress of the women’s movement from the 1985 Nairobi Forward-Looking Strategies, and sought to make the concerns of women a high priority on the international agenda. First Lady Hillary Rodham

¹⁰³ REPORT ON THE FOURTH ANNUAL WORLD CONFERENCE ON WOMEN, ANNEX II, PLATFORM FOR ACTION (1994), *available at* [gopher://gopher.undp.org:70/11/unconfs/women/off/plateng](http://gopher.undp.org:70/11/unconfs/women/off/plateng) [hereinafter PLATFORM FOR ACTION].

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ UN DEPARTMENT OF PUBLIC INFORMATION, UNITED NATIONS SUMMARY ON THE PLATFORM FOR ACTION: CRITICAL AREAS OF CONCERN PAMPHLET, DPI/1578/Dev1/Wom-95-16831-June1995-30M [hereinafter CRITICAL AREAS OF CONCERN].

Clinton set the tone of the Conference by proclaiming in her speech to delegates that "women's rights are human rights."¹⁰⁷

The blueprint adopted at the Beijing Conference, the PFA, offers strategic actions for governments, the international community, the private sector, and nongovernmental organizations to fulfill the conference's goals of equality, peace, and development. These goals are the foundation for the concept that human rights are also women's rights.

The draft PFA listed twelve areas of critical concern to women.¹⁰⁸ First, the issue of poverty more greatly afflicts a woman statistically than her male counterpart. For example, women constitute nearly seventy percent of the world's 1.2 to 1.3 billion poor.¹⁰⁹ A changing global economic climate, dislocation due to war, and persistent external debt problems are contributing factors that lead to poverty for both women and men.¹¹⁰ However, women face the additional burdens of cultural prejudice, minimal participation in decisionmaking positions, and unequal inheritance and property laws. These additional obstacles increase the number of women who live in poverty and further prevent their escape from such an environment.

The PFA recommends an overall poverty reduction strategy: governments should perform an analysis on national policies and programs regarding women's issues; develop and implement policies to evenly distribute resources between women and men where such laws still promote inequitable inheritance laws; enhance women's access to credit from lending institutions; and provide job assistance programs to low-income women.¹¹¹

The second area of concern involves education. Female children today receive an education in greater numbers than in previous years.¹¹² However, girls continue to be denied the quality of education that boys receive, particularly, in the fields of science and technology.¹¹³ Moreover, two-thirds of the world's illiterate are women, the majority from rural areas.¹¹⁴ For example, the only public education in rural Ghana is

¹⁰⁷ See *supra* note 9 and accompanying text.

¹⁰⁸ PLATFORM FOR ACTION, *supra* note 103, at 3.

¹⁰⁹ CRITICAL AREAS OF CONCERN, *supra* note 106, § 1.

¹¹⁰ *Id.*

¹¹¹ PLATFORM FOR ACTION, *supra* note 103.

¹¹² *Id.* ¶¶ 70-71.

¹¹³ *Id.* ¶ 75.

¹¹⁴ CRITICAL AREAS OF CONCERN, *supra* note 106, § 2.

for boys.¹¹⁵ Additionally, school drop out rates are higher for girls than for boys.¹¹⁶

The PFA proposes that governments close the gender gap in primary and secondary education by the year 2005; reduce the female illiteracy rate, focusing particularly on girls from rural areas and in developing countries; and promote the sciences equally between girls and boys.¹¹⁷

The third area of concern is the health of women. Women's health is influenced by many factors, such as biological differences and social conditions. In general, impoverished conditions lead to more significant health problems for women and men.¹¹⁸ Specifically, reproductive health problems for women in a poverty stricken environment remain statistically high, often leading to higher mortality rates.¹¹⁹ For example, a half million women die each year due to pregnancy complications;¹²⁰ another 100,000 die from unsafe abortions.¹²¹ Furthermore, lack of adequate nutrition, inadequate housing, and drinking water pose a threat to rural women's health.¹²² These problems are also more significant in impoverished areas.

The PFA recommended that governments work in collaboration with the UN system, the medical community, research institutions, and nongovernmental organizations ("NGO"s) to design and implement gender-sensitive health programs; provide affordable primary health care; and promote research on women's health.¹²³

Fourth, violence against women is a global problem. Women lack access to legal information about and protection from violence,¹²⁴ face inadequate laws to address violence,¹²⁵ and suffer laws that are not

¹¹⁵ This fact is based on the author's personal experience with Ghana.

¹¹⁶ CRITICAL AREAS OF CONCERN, *supra* note 106, § 2.

¹¹⁷ PLATFORM FOR ACTION, *supra* note 103, ¶ 80.

¹¹⁸ *Id.* ¶ 91.

¹¹⁹ *Id.* ¶ 94.

¹²⁰ CRITICAL AREAS OF CONCERN, *supra* note 106, § 3.

¹²¹ *Id.*

¹²² *Id.*

¹²³ PLATFORM FOR ACTION, *supra* note 103, ¶ 106.

¹²⁴ *Physicians and Domestic Violence: Ethical Considerations* (Report from the American Medical Association's Council of Ethical and Judicial Affairs), 267 JAMA 3190 (1992) (battered women/domestic violence).

¹²⁵ See generally *Domestic Violence, Not Just a Family Matter*, 1995: Hearings Before the Subcomms. on Labor, Health and Human Services, Education and Related Agencies of the Senate Comm. on Appropriations (1995) (prepared testimony of Donna Lawson, mother of homicide victim) (seeking

enforced.¹²⁶ The submission of women due to cultural patterns also contribute to violence against women.¹²⁷ Statistics demonstrate that a woman is physically abused every twelve seconds in the United States;¹²⁸ five women are burned every day in India over dowry disputes;¹²⁹ and a survey conducted in Papua, New Guinea has demonstrated that sixty-seven percent of women are found to be victims of domestic violence.¹³⁰

Actions proposed by the PFA include developing educational programs which condemn violence against women and modify those cultural behaviors which place women in an inferior status.¹³¹ The PFA also suggests that governments ratify and enforce bans on prostitution and trafficking of women and girls.¹³²

The fifth PFA area deals with the fact that men and women often have different experiences during armed conflict. In many instances, women are the primary source for maintaining the family while men engage in warfare.¹³³ Women are also victims of torture and rape during armed conflict.¹³⁴ Women and their dependents constitute eighty percent of the world's twenty-three million refugees.¹³⁵

funding for the Violence Against Women Act) [hereinafter Lawson].

¹²⁶ *Id.*

¹²⁷ *Photo Reveals Much More than a Woman*, BUFFALO NEWS, July 14, 1994, at C2. *But see* Lily Eng, *Study Challenges Views of Wife Beaters and Their Victims*, SACRAMENTO BEE, Aug. 21, 1993, at A2.

¹²⁸ Ann Koize, *Don't Reward Women Abusers*, CINCINNATI ENQUIRER, Feb. 6, 1995, at A13 (citing World Watch estimates).

¹²⁹ *Fourth UN Women's Conference*, GUARDIAN (London), Aug. 28, 1995, at 11. *See also* William Claiborne, *Dowry Killings Show Social Stress in India*, WASH. POST, Sept. 22, 1984, at A1 (analyzing the bride burning phenomenon and its social causes).

¹³⁰ Marcela Valente, *Human Rights — Women: Domestic Violence a Major Threat to Safety*, INTER PRESS SERVICE, July 4, 1994, available in WESTLAW, ALLNEWS database.

¹³¹ PLATFORM FOR ACTION, *supra* note 103, ¶ 124(k).

¹³² *Id.* ¶ 130(a).

¹³³ *Id.* ¶ 133.

¹³⁴ Senthil Ratnasabapathy, *Women: Beijing Meet Urged to Take Action to Halt Rape in War*, INTER PRESS SERVICES, Sept. 1, 1995, available in WESTLAW, ALLNEWS database.

¹³⁵ *Budget for Overseas Refugee Assistance, FY 95: Hearings Before the Subcomms. on Foreign Operations, Export Financing, and Related Programs of the House Comm. on Appropriations* (1994) (testimony of Roger P. Winter, Director, United States Committee for Refugees).

The PFA proposes that governments consider ratifying treaties on the protection of women and children during armed conflict;¹³⁶ hasten the conversion of military resources into more peaceful uses;¹³⁷ condemn the systematic practice of rape and other degrading treatment as an instrument of war;¹³⁸ and provide safe havens for refugees.¹³⁹ As a practical realization, the paramount interests of a nation's leaders are to project power and defend during wartime. Human rights standards are generally overlooked while countries engage in acts of aggression. As such, the mistreatment of people continues unabated.

Sixth is the fact that women comprise a large segment of the global work force. In 1990, about 854 million women, approximately thirty-two percent of world's labor force, were economically active.¹⁴⁰ Conversely, women are poorly represented in top-level managerial positions in proportion to their numbers in the work force.¹⁴¹ Most female managers are concentrated in lower level positions of management. For example, in the United States, only one in one hundred executives is a woman.¹⁴² Furthermore, women in comparison to men make less money per year, and their contributions are undervalued.¹⁴³

Actions proposed by the PFA include encouraging governments to enact legislation to guarantee the rights of women and men to equal pay for equal work;¹⁴⁴ adopt and implement laws against gender based discrimination in the work force;¹⁴⁵ promote women in business by strengthening their access to capital;¹⁴⁶ and devise mechanisms whereby women may gain greater access to high-level positions in management.¹⁴⁷ The PFA also encourages national and international lending

¹³⁶ PLATFORM FOR ACTION, *supra* note 103, ¶ 144(a).

¹³⁷ *Id.* ¶ 143(a).

¹³⁸ *Id.* ¶ 145(c).

¹³⁹ *Id.* ¶ 147(c).

¹⁴⁰ UNITED NATIONS, 1994 WORLD SURVEY ON THE ROLE OF WOMEN IN DEVELOPMENT (1995) [hereinafter 1994 WORLD SURVEY].

¹⁴¹ Andrea Shalal-Esa, "Glass Ceiling" Still in Place, *Report Says*, L.A. DAILY NEWS, Aug. 12, 1992, at B1.

¹⁴² 1994 WORLD SURVEY, *supra* note 140.

¹⁴³ *Wages, Education, Two-Career Families and Earnings Gaps*, MARKETING TO WOMEN, Apr. 1, 1995.

¹⁴⁴ PLATFORM FOR ACTION, *supra* note 103, ¶ 165(a).

¹⁴⁵ *Id.* ¶ 165(b).

¹⁴⁶ *Id.* ¶ 166(a).

¹⁴⁷ *Id.* ¶ 178(a)-(p) (outlining various specific measures to eliminate occupational segregation and all forms of employment discrimination).

institutions to support small-scale entrepreneurs and low-income women in order to achieve greater economic security.¹⁴⁸ The final document emphasizes that economic independence for women leads to creating a "safety net" and changing one's own realities.¹⁴⁹

The seventh and eighth critical areas of concern include women in decision-making roles and the need to create national and international machineries to place women into higher positions of authority. World-wide, women have made considerable advances in the political arena, particularly at the local level. As of 1994, ten women headed their national governments, an unprecedented number at the time.¹⁵⁰ Yet, statistics again indicate that women, who comprise half of the world's population, constitute only a small number at top decisionmaking levels, such as heads of state, diplomats, or policymakers. Current information also indicates that more than one hundred countries do not have any women in their legislatures, and only 6 of the 185 members of the UN have women representatives.¹⁵¹ Negative stereotypes of women and cultural practices contribute to the limited number of women who represent their local, state, or national governments.¹⁵² The PFA recommends that nations commit to gender balance in decision-making bodies.¹⁵³ This could be achieved by establishing quotas for minority representation.¹⁵⁴

The ninth area of concern involves human rights for women. As previously stated, women often have rights guaranteed by law, but governments fail to insure that the laws are carried out.¹⁵⁵ Appropriate recourse mechanisms also require strengthening at the national and international levels. Furthermore, nations which have not ratified CEDAW subject women to less legal protection and a greater likelihood of experiencing political, social, and economic discrimination than those who have enacted it.

¹⁴⁸ *Id.* ¶ 167(c).

¹⁴⁹ *Id.*

¹⁵⁰ UN FOURTH WORLD CONFERENCE ON WOMEN, ACTION FOR EQUALITY, DEVELOPMENT, AND PEACE, FACT SHEET 7; POLITICS AND DECISION-MAKING (1995).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ PLATFORM FOR ACTION, *supra* note 103, ¶ 190(a).

¹⁵⁴ *Id.*

¹⁵⁵ *See generally* Lawson, *supra* note 125 (seeking funding for the Violence Against Women Act).

Actions recommended by the PFA include creating or strengthening national institutions to protect women's rights.¹⁵⁶ Governments are also encouraged to review national laws and repeal laws that discriminate against women,¹⁵⁷ and educate public officials about gender sensitivity.¹⁵⁸

Tenth, the PFA is critical of how women are depicted in the mass media. Certain images of women reinforce negative stereotypes and reflect outdated views.¹⁵⁹ In Africa, Asia, and Latin America, positions for women in broadcasting average below twenty-five percent.¹⁶⁰ A ten country study conducted by the UN reveals that only 1.4% of television news items deal with women's issues; three quarters were presented by men.¹⁶¹

The PFA recommends that the media exercise greater gender sensitivity when presenting the news.¹⁶² Private organizations need to create media watchdog groups, which would place pressure on the media to increase the number of women in the broadcasting field and management positions.¹⁶³

The eleventh PFA concern places an emphasis on women's environment and development. Often, governmental policies do not take into account the impact of economic development on the environment and its link to daily lives.¹⁶⁴ Sustainable development of the environment is of considerable importance to people who live directly off the land.

To illustrate, women account for half of the food production in developing countries.¹⁶⁵ In India, women provide seventy-five percent of the labor for transplanting and weeding rice, sixty percent for

¹⁵⁶ PLATFORM FOR ACTION, *supra* note 103, ¶ 230(e).

¹⁵⁷ *Id.* ¶ 232(d).

¹⁵⁸ *Id.* ¶ 232(i).

¹⁵⁹ *Women: Battle for Equality Must be Waged with Words and Images*, INTER PRESS SERVICE, Nov. 9, 1993, available in WESTLAW, ALLNEWS database.

¹⁶⁰ CRITICAL AREAS OF CONCERN, *supra* note 106, § 10.

¹⁶¹ Melissa Fletcher Stoeltje, *Female Rights Spelled out in Blueprint*, HOUSTON CHRON., Sept. 8, 1995, at 1.

¹⁶² PLATFORM FOR ACTION, *supra* note 103, ¶ 235.

¹⁶³ *Id.* ¶ 240.

¹⁶⁴ *Id.* ¶ 246.

¹⁶⁵ *Women—Food: More Equality for Women Could Raise Food Production*, INTER PRESS SERVICE, Aug. 10, 1995, available in WESTLAW, ALLNEWS database.

harvesting, and thirty-three percent for threshing.¹⁶⁶ According to the UN Economic Commission for Africa, women perform up to three quarters of all agricultural work in addition to their domestic responsibilities.¹⁶⁷ The group most affected by the environment is rural and indigenous women, whose livelihood and daily subsistence depends directly on sustainable ecosystems.¹⁶⁸ Understanding the impact of poverty and the environment on urban women is also critical.

The PFA encourages governments to include women in all environmental decisionmaking levels management of resources.¹⁶⁹ The PFA further supports increased research and education in the environment and its effect on women.¹⁷⁰

Finally, the PFA is concerned about the fact that, in many countries, girls are discriminated against both socially and educationally. For example, boys receive greater encouragement than girls to pursue opportunities.¹⁷¹ Cultural bias against a girl early in life is often reflected later where her impact may not be as significant as her male counterpart. The UN Department of Public Information statistics also indicate that more than two million girls undergo genital mutilation.¹⁷² Trafficking young girls in prostitution is another problem, particularly amongst the poor.¹⁷³

The PFA recommends that governments pass strict laws that require a minimum age for marriage;¹⁷⁴ protect the safety and security of girls from all forms of violence;¹⁷⁵ enact legislation that prohibits using girls

¹⁶⁶ UNITED NATIONS DEVELOPMENT PROGRAM, HUMAN DEVELOPMENT REPORT (1995).

¹⁶⁷ UN FOURTH WORLD CONFERENCE ON WOMEN, ACTION FOR EQUALITY, DEVELOPMENT, AND PEACE, FACT SHEET 1, POVERTY (1995).

¹⁶⁸ *Id.*

¹⁶⁹ PLATFORM FOR ACTION, *supra* note 103, ¶¶ 253(a), 256(a).

¹⁷⁰ *Id.* ¶ 256(f) (addressing the role of women, particularly rural and indigenous women, in managing the environment).

¹⁷¹ *Teachers' Encouragement of Girls Doesn't Make the Grade, Study Says*, INDIANAPOLIS STAR, May 14, 1994, at B3.

¹⁷² *Anti-Women Violence Condemned by All — But Tolerated Globally*, CHI. TRIB., Aug. 30, 1995, at 2.

¹⁷³ See, e.g., Molly Moore, "Even if I Ran Away, Where Would I Go?" *Third World Prostitutes: Entrapped by Fate in a Sordid Trade Series: Third World, Second Class: Women in the City*, WASH. POST, Feb. 16, 1993, at A25 (discussing Southeast Asian prostitution).

¹⁷⁴ PLATFORM FOR ACTION, *supra* note 103, ¶ 274(e).

¹⁷⁵ *Id.* ¶ 283(d).

as an economic commodity;¹⁷⁶ take appropriate legislative measures to protect girls from domestic abuse;¹⁷⁷ and eliminate discriminatory practices against girls in education.¹⁷⁸

B. Challenged Areas in the "Platform for Action"

Controversy initially surrounded the comprehensive PFA as more than half of the original language was opposed by at least one of the 181 delegations attending the Beijing Conference.¹⁷⁹ However, the contentious build-up subsided as the tone of the Beijing Conference grew more collaborative than confrontational. As Filipino Patricia Licuanan, president of the final drafting committee for the Beijing declaration, noted: "The debates are not as shrill this time. People are very pragmatically trying to work out differences. The atmosphere is more friendly."¹⁸⁰ Any perceived controversial language in the draft declaration subsided at a record rate during the final negotiations amongst the delegations.

Several reasons were given for the mostly noncontentious atmosphere at the Conference. First, reproductive health and abortion were strongly debated at the Cairo Population Conference in 1994.¹⁸¹ Therefore, much of the groundwork on this issue was paved for the Beijing Conference. For example, the final document adopted in Beijing evidenced a compromise between reproductive choice advocates and reproductive choice opponents. While women had the right to make their own decisions about child bearing,¹⁸² the document also supported the family as the basic unit of society.¹⁸³ After much opposition in the area of abortion, the Vatican conceded and accepted such language.¹⁸⁴

¹⁷⁶ *Id.* ¶ 282(a) (referring to the employment of girls in the work force, not to prostitution).

¹⁷⁷ *Id.* ¶ 283(b).

¹⁷⁸ *Id.* ¶¶ 277(a), 279-280 (setting forth specific steps for governments and NGOs to take to eliminate discrimination in education).

¹⁷⁹ Rone Tempest, *Fight Brewed Before Beijing Conference, But It Never Percolated; Women: Legwork on Controversial Issues at Cairo Gathering Paves Way for Pragmatic China Talks*, L.A. TIMES, Sept. 9, 1995, at 18.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² REPORT ON THE FOURTH ANNUAL WORLD CONFERENCE ON WOMEN, ANNEX I, BEIJING DECLARATION at 17 (1995), available at gopher://gopher.undp.org/701/11/unconfs/off/plateng [hereinafter BEIJING DECLARATION].

¹⁸³ PLATFORM FOR ACTION, *supra* note 103, ¶ 29.

¹⁸⁴ Tempest, *supra* note 179.

Moreover, American domestic politics was another reason for the overall agreeable, pragmatic atmosphere in Beijing. Hillary Rodham Clinton's speech to the Conference delegates, condemning China's one child policy and forced sterilization programs, played well to the Vatican and American conservatives at home. This tempered animosity between liberals and conservatives attending this Conference.¹⁸⁵

The Vatican, represented by a woman for the first time,¹⁸⁶ made considerable efforts not to block the passage of the final document. For example, during negotiations over a paragraph dealing with human immunodeficiency virus ("HIV"), the paragraph called for the distribution of condoms to prevent the disease from being further transmitted. The Vatican initially objected to the reference to condoms because of its opposition to any artificial birth control and ordered that section to be bracketed.¹⁸⁷ Later, however, during the Conference, Vatican negotiator Sherry Ricquert agreed that the brackets be dropped.¹⁸⁸ Thus, the reference to the use of condoms remained. Politics may have persuaded the Vatican to drop the brackets. African countries, faced with a devastating AIDS epidemic, would certainly have fought the Holy See on this issue.

Finally, some controversy did arise over the reference to "sexual orientation," which was mentioned at least four times in the draft document.¹⁸⁹ Such references were bracketed due to opposition from conservative delegations, including the Vatican and Islamic countries. Lesbian organizations viewed the reference to "sexual orientation" as a formal recognition of one's right to control her sexuality, and lobbied strongly for the term to be included in the anti-discrimination section of the PFA.¹⁹⁰ Lesbian advocacy groups counted on the United States delegation to stand firmly behind their position.¹⁹¹ Initially, the American delegation supported the reference to the "sexual orientation" as a protected right, reasoning that discriminatory practices against particular

¹⁸⁵ *First Lady Denounces Abuse of Women Around the World, China Criticized: Her Forceful Speech Singles Out Beijing for Trying to Curb Free Discussion at the World Conference*, ATLANTA J. & CONST., Sept. 6, 1995, at A3.

¹⁸⁶ *Id.* Mary Ann Glendon, a noted Harvard law professor, was the delegate.

¹⁸⁷ Bracketing language in a document usually indicates that a reference was controversial and opposed.

¹⁸⁸ Tempest, *supra* note 179.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

groups are reprehensible. Yet, that delegation acquiesced to the term "right to control sexuality" rather than "sexual orientation," so that there were not any obstacles to finalizing the document. Lesbian groups, although disappointed, accepted the reference to the "right to control sexuality" because this term implies that sexual orientation is to be a protected right.

The Fourth World Women's Conference concluded with more than sixty delegations commenting upon and more than half of the 181 delegations submitting formal reservations to sections on sexual and reproductive rights. In particular, many Islamic and several Latin American countries believed such rights did not conform to Islamic law.¹⁹² Only ten countries said they would accept the entire final document.¹⁹³

Ultimately, the final, adopted PFA reaffirmed the universality of human rights. Furthermore, the PFA recommended that governments develop implementation strategies from the final document by the end of 1996.¹⁹⁴ This will be a large task for more conservative countries who have yet to adopt many of the programs suggested.

C. *NonGovernmental Organization Forum in Huairou, China*

Prior to the Nongovernmental Organization ("NGO") Forum, which was to be held in conjunction with the Conference, the Chinese government decided that the forum would be held in a separate setting from Beijing. NGO Forum coordinators were unhappy with the selection of Huairou as a location because this site was ninety minutes from the Conference site. Fearing security problems and demonstrations against China's human rights record, that government wanted to eliminate any potentially embarrassing situation by separating a large number of women from one location.¹⁹⁵ Reportedly, the Chinese also blocked visa entries for some NGO participants as a way to measure control over the Forum.¹⁹⁶

¹⁹² Tiffany Bown, AGENCE FRANCE-PRESSE, Sept. 14, 1995, *available in* WESTLAW, ALLNEWS database.

¹⁹³ THE FOURTH WORLD CONFERENCE ON WOMEN, CLOSING PLENARY SUMMARY, *available at* <http://www.iisd.ca:80/linkages/4wcw>.

¹⁹⁴ PLATFORM FOR ACTION, *supra* note 103, ¶ 297.

¹⁹⁵ Sheila Tefft, *China Holds Fast to Isolating Thousands of Blunt Women: Some Concessions on NGO Forum During UN Women's Meeting This Fall*, CHRISTIAN SCI. MONITOR, June 16, 1995.

¹⁹⁶ *Id.*

Huairou, a small resort town, was not prepared for the thousands of women who attended the Forum. Conditions were substandard compared to western standards.¹⁹⁷ Nevertheless, women worldwide attended to network, exchange information, and organize.

At the Conference, selected NGO members lobbied Conference delegates and influenced the final document. Although there was no formal interchange between the forum and the delegations to the government conference, the two events did influence one another.

At the grass roots level, NGOs play a vital role in fighting existing practices, laws, and customs which subjugate women. They represent the organizations outside of government which maintain pressure on governments and society at large to eliminate gender discrimination. The Beijing document acknowledged the importance of NGOs in advancing legislation to ensure the promotion of women in society.¹⁹⁸

CONCLUSION

The question must be asked: Can a human rights document, such as that formulated in Beijing, make a difference in women's lives? The UN platform adopted in Beijing is not a legally binding document, but rather a guide for governments to implement. However, without the legal force of a treaty, implementation of a document's objectives is more difficult to achieve.

Moreover, questions arise as to whether the document's goals and strategies will be realized. This is based partially on the fact that previous women's conferences have not yielded the ambitious goals articulated in their respective documents. Yet change *has* occurred incrementally for women since the creation of the UN, the promulgation of international human rights treaties, and UN sponsored women's conferences.

Perhaps treaties and Conference documents may be most useful in developing countries by discouraging practices, such as bride burnings, genital mutilation, and kidnapping; although carrying out change is often most difficult for those who live in traditional societies and under limited legal systems. International pressure, through the weight of international law, and the strengthening of grass roots movements, are methods of forcing change in societies where change is least likely to occur, or where women's rights are restricted.

¹⁹⁷ *Id.*

¹⁹⁸ BEIJING DECLARATION, *supra* note 182, at 20.

Another real challenge for governments is the actual implementation and/or enforcement of international human rights treaties that protect women and ensure their equal status to men. For example, treaties and nonbinding, human rights documents, which are in conformity with the purposes and principles of international law, are vital to women in instances where domestic laws will not suffice. Conversely, when both domestic law and international law prohibit gender discrimination, governments must be encouraged to carry out the spirit and the intent of either sphere of law which better protects women.

The Beijing document, focused and comprehensive in scope, has laid the fundamental groundwork for women into the early next century. Despite certain obstacles, such as inadequate laws or traditional social customs prejudiced against women, the UN, NGOs, and state and regional governments must work hard to ensure that women have a strong voice in society. As Nobel Peace Prize winner and former Myanmar political prisoner, Aung San Suu Kyi, stated at the NGO Forum, "It is time to apply in the arena of the world the wisdom and experience women have gained."¹⁹⁹ Affirming Aung San Suu Kyi's words, United States Ambassador to the UN Madeleine Albright summarized in her speech to the Conference, that "it is time to unleash the full capacity for production, accomplishment, and the enrichment of life that is inherent in the women of the world."²⁰⁰

Finally, the history of women's conferences, like history itself, has a "ripple effect" whereby one idea provides the foundation for another idea. The women's conference in 1888 and the Beijing Conference are benchmarks in the women's movement, measuring where women have been and where they are going. In viewing the historical continuum, it is evident that women have made inroads toward achieving greater political, economic, and social prominence. However, much work needs to be done, and great efforts must continue despite the hardships. Women's conferences are one way to influence social policy in a rapidly changing world and to define the responsibility of government toward women.

¹⁹⁹ Remarks to the Fourth World Conference on Women, Ambassador Madeleine K. Albright U.S. Permanent Representative to the United Nations, Sept. 6, 1995, Beijing, China (quoting Aung San Suu Kyi).

²⁰⁰ *Id.*

